IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 894 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VITTHALBHAI M RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 894 of 1993
MR PM VYAS for Petitioner No. 1
THROUGH JAIL for Petitioner No. 1
MR AJ DESAI Ld. APP for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE M.C.PATEL

Date of decision: 04/08/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE N.G.NANDI)

1. This appeal recording conviction for the offences under Section 302 and 323 of Indian Penal Code against the appellant - convict is directed against the judgement dated 28.7.1993, by the learned Additional Sessions Judge, Bharuch in Sessions Case No.124 of 1992.

2. The facts leading to the filing of the present appeal shortly stated are that Dahyabhai Somabhai, Fisherman, had come to the place of complainant-Babubhai Somabhai at village Jamri, Taluka - Jambusar, District-Bharuch for repairing work of the Grampnachayat, wherein the complainant Babubhai Somabhai was a Sarpanch; that on 4.4.1992, after finishing the day's work, Dahyabhai Somabhai was sleeping on the otta of Babubhai Somabhai along with Bhikhabhai Chaturbhai; that complainant - Babubhai Somabhai and his wife Jamnaben were sleeping inside the house; that at about 2.00 O'clock in the mid night Dahyabhai Somabhai was given a blow of thick piece of wood by Vitthalbhai Melabhai upon which Dahyabhai raised shouts and upon hearing the same, Jamnaben came out and Vitthalbhai also dealt a blow with a thick piece of wood on Jamnaben; that Jamnaben also raised cries and upon hearing the same, Babubhai came out, who was also dealt a blow by Vitthalbhai with thick piece of wood on left shoulder; that Jamanaben and Babubhai sustained injuries along with Dahyabhai; that hearing the shouts / cries people from neighborhood gathered; that complainant was also told by nephew of the accused that the wife of the accused Vitthalbhai Melabhai is dead; that thereafter the complaint about the incident, Exh.18, came to be filed at the instance of Babubhai Somabhai alleging offences under Section 302 and 323 of the Indian Penal Code; that thereafter, the usual investigation started and the accused Vitthalbhai Melabhai was arrested on the same day; that on completion of the investigation, the charge sheet came to be filed against the accused Vitthalbhai Melabhai. The accused denied the charge levelled against him and claimed to be tried. The prosecution in order to bring the guilt home to the accused adduced oral as well as documentary evidence. The learned trial Judge appreciating oral as well as documentary evidence and also considering the statement of the accused under Section 313 of the Code of Criminal Procedure found accused Vitthalbhai Melabhai guilty for the offence under Section 302 of the Indian Penal Code for committing the murder of his wife Meghiben, and also for the offence under Section 323 of

the Indian Penal Code for committing the offence of causing hurt to complainant - Babubhai Somabhai and his wife Jamnaben. The accused Vitthalbhai Mala for the offences under Section 302 of the Indian Penal Code was sentenced to suffer imprisonment for life, whereas for the offence under Section 323 of the Indian Penal Code, the accused was sentenced to suffer one month SI and fine of Rs.100/and in default, 7 days SI. Both the sentences were directed to run concurrently. It is this conviction for offences under Section 302 and 323 of the Indian Penal Code and the sentence of life imprisonment and SI for one month with fine of Rs.100/and in default, 7 days SI, have been assailed in this appeal by the appellant convict.

3. We have heard the submissions advanced by Mr. P.M.Vyas, learned advocate for the appellant - convict and Mr.A.J.Desai, learned APP for the respondent - State. We have also re-appreciated the evidence placed before us adduced in the trial Court.

4. Exh.6 is the Inquest Panchnama on the dead-body of deceased Maghiben. It is suggested therefrom that the dead-body of Maghiben was found lying in her residential house, wherein she was residing with her husband Vitthalbhai Melabhai. The dead-body was on the quilt in the room. It is also suggested that on the left portion of the head of the dead-body there were four wounds / injuries over and above one wound / injury in the left ear and the left ear was also found cut with blood oozing out of the head as well as ear.

5. The evidence of PW-1 Dr. Narendra Gunvantai Joshi suggested that on 5.4.1992, he had performed the P.M.Examination on the dead-body of Maghiben Vitthalbhai Rathod and noticed following external injuries.

(i) Incised wound on left parietal region 1cm lateral on middle in arteripasterin direction 5 cm x 1 cm x scaf deep.

(ii) Incised wound on left parietal region 1 cm lateral to injury no.1 in arteripasterin direction 4cm x 1 cm x scaf deep skull.

(iii) Incised wound on left temporal region in arteripasterin region 3 cm x 1 cm x scaf deep.

(iv) Incised wound on left temporal region 1cm

below the injury no.3in external pasterin direction 4 cm x 1 cm x scaf deep.

(v) Incised wound on left ear upper portion 2 cm x 1 cm x whole thickness of ear.

(vi) Incised wound on left temporal region at the level of Injury No.5 2cm x 0.5 cm scaf deep.

(vii) Incised wound on back of left ear middle part and left mostord region 3 cm x 0.5 cm x scaf deep.

It is suggested from his evidence that following are the internal injuries noticed.

(i) Vault of skull left parietal bone and left temporal bone

(ii) Base of skull - middle ozonial fosse.

(iii) Massive extradural and subdural clots on left side.

The evidence further suggests that the external injuries nos.1 to 4 corresponds with internal injury nos.1 and 2 and all these injuries were ante-mortem, and that the death must have occurred 12 to 24 hours prior to the P.M.Examination. It is also suggested that injury nos.1 to 7 could be caused by sharp edged weapon and the injuries noted were sufficient in the ordinary course of nature to cause death with muddamal Article-12 (Axe). That with the sharp portion of muddamal (Axe) the injuries noted could be caused. It is also suggested from the evidence of PW-1 that the cause of death is the injury caused on the head, resulting into external as well as internal hemorrhage with shock. P.M.Notes Exh.14 has been proved in the evidence of PW-1, as PW-1 stated to have prepared the said PM Notes.

Nothing substantial has been brought out from the cross-examination of the witnesses. The medical evidence suggests that deceased Maghiben, wife of accused -Vitthalbhai Melabhai, died a homicidal death.

6. It is stated in the complaint, Exh.18, that Vajesinh, nephew of Vitthalbhai Melabhai, told the complainant that Bhikhabhai Chaturbhai was having illicit relations with Maghiben and because of that instead of beating Bhikhabhai Chaturbhai, Dahyabhai Somabhai and

Complainant have been beaten. The evidence of Lakhiben, PW-4, suggests that the incident had taken place at about 2.00 O'clock in the night; at that time quarrel took place between Vitthalbhai Melabhai and his wife; that she had gone to awaken her uncle; that she knows the accused as the house of the accused is just opposite to her house and that Laxman Galab has been residing in her neighborhood.

Map, Exh.28, suggests that the house of PW-4 is just opposite the house of the accused with a passage of 19 feet width between the house of PW-4 and the accused; that at 2.00 O'clock in the night when everything was quite, the witness could easily hear the quarrel which took place between deceased Maghiben and the accused. Thus, it can be said that the quarrel took place between deceased Maghiben and the accused Vitthalbhai Melabhai.

7. Panchnama pertaining to the place of incident is to be found at Exh.26. Perusal of the same suggests that the place of occurrence was near the western door of the house of Vitthalbhai Melabhai. At this place one quilt east-west was found spread on the floor and at the western portion of the quilt blood was found. Near the quit, one axe was also lying. Handle of the said axe was broken and two pieces of the handle of the axe were found at this place and the same were recovered by Panchnama, Exh.26. That one piece was 4 inch long. As seen earlier, the dead-body of Maghiben was on the said quilt as per the Inquest Panchnama, Exh.6, and as per the Panchnama blood was found on the quilt with axe lying near the quilt with broken handle. There is no evidence to suggest that there was any other person in the house at the time of incident. The evidence suggests that only Vitthalbhai Melabhai and his deceased wife Maghiben were in the house at the relevant time when the quarrel between two took place which according to PW-4 she over heard.

8. It is suggested from the evidence on record that the axe was discovered at the instance of accused Vitthalbhai Melabhai. Panchnama, Exh.26, has been received in evidence on the endorsement by the Advocate for the defence in the trial Court for receiving and reading the same in evidence. Muddamal articles were sent to the Forensic Science Laboratory for necessary report. Exh.9 is the forwarding letter by the Forensic Science Laboratory. Exh.10 is the report of the serologist. Perusal of the same suggests that the sample of the earth, axe, pieces of wood with the pieces of the handle of the axe, quilt recovered from the place of

incident contained human blood of 'A' group. It may be seen that the quilt recovered from the place of incident had the blood and also the broken piece of handle of the axe contained human blood of 'A' group and the dead-body as per the inquest panchnama,Exh.6, was on the said quilt.

Evidence of PW-1 suggests the post-mortem examination conducted by her on the dead-body of Maghiben and external injuries noticed, noted with cause of death in P.M.report Exh.16.

PW-5 Jitubhai Fulabhai has stated in his evidence that he stays at village Jamri and on the day of incident, he had gone to sea for fishing and at about 3.00 O'clock in the early morning he was returning to his house and on way, Vitthalbhai Melabhai met him; that he asked Vitthalbhai Melabhai as to where is he going in the night, whereupon Vitthalbhai Melabhai is said to have told the witness that he has come killing his wife;

9. Considering the Inquest Panchnama, Exh.6, Panchnama pertaining to the place of incident, Exh.26, P.M.Notes, Exh.16 and also the recovery of muddamal articles, as above, the report of the Forensic Science Laboratory, Exh.10 and the fact that in the house only the accused and his wife Maghiben were residing and there were quarrel between as deposed by PW-4, who is staying just opposite to the house of the accused, and also the deposition of PW-5 which would be an extra judicial confession by the accused before PW-5, Exh.22, about he having killed his wife, we are of the opinion that the finding of guilt arrived at by the learned trial Judge that accused Vitthalbhai Melabhai killed his wife does not call for any interference as the evidence on record satisfactorily establishes the factum of Vitthalbhai Melabhai having killed his wife Maghiben as the prosecution version is corroborated by the medical evidence as the panchnama of place of occurrence Exh.26 and FSL report Exh.10.

10. As far as the injuries caused to complainant Babubhai Somabhai and his wife Jamnaben are concerned, evidence of PW-1 suggests that on 5.4.1992 he had examined Babubhai Somabhai and noted the following external injuries.

"D.T.S. on left clavicular region about 4 cm x 4 cm in size.

Fracture left clavicle

Patient was sent to SSG Hospital, Baroda on 5.4.1992 for further investigation and treatment."

PW-1 has proved the injury certificate, Exh.13.

It is also suggested from the evidence of PW-1 that he examined Jamnaben and noted following external injuries.

"CLW on left ear

3 cm x 1 cm x through and through thickness of left ear.

Patient was sent to SSG Hospital, Baroda on 5.4.1992 for further investigation and treatment".

Injury Certificate, Exh.14, in respect of injuries sustained by Jamnaben has been proved by PW-1.

11. PW-5 Jitubhai Fulabhai has stated in his evidence, Exh.22, that Vitthalbhai Melabhai told the witness that he has also beaten 2 to 3 other persons; that Vitthalbhai Melabhai did not give the names of other persons. In the cross-examination it has been stated by the witness that he did not tell any one except the police what Vitthalbhai Melabhai told him. Nothing substantial has been brought out from the cross-examination of this witness so as to disbelieve him on Vitthalbhai Melabhai having told him about killing his wife and also beating two-three persons.

12. PW-2, who gave the complaint at Exh.18 about the incident, has deposed in his evidence that the incident took place in April,1992 and at that time, repairing work of the school of Grampanchayat was going on for which work, Dahyabhai Somabhai had come to village Jamri; that on the day of the incident Dahyabhai was sleeping on the otta of the house of the witness and by his side Bhikhabhai Chaturbhai was also sleeping and the witness and his wife Jamnaben were sleeping inside the house; that Dahyabhai raised shouts as Vitthalbhai had beaten him, upon hearing the shouts, his wife Jamnaben came out; that Jamnaben was also given a blow with thick piece of wood; that Jamnaben also raised shouts and upon hearing the same, witness came out and Vitthalbhai Melabhai dealt a blow with thick piece of wood on the left shoulder of the witness causing injury; that at that time Bhikhabhai

Chaturbhai had fled; that the people gathered; that the nephew of the Vitthalbhai Melabhai told the witness that wife of Vitthalbhai Melabhai is dead; that thereafter the complaint, Exh.18, came to be given by the witness in the police station; that the witness was taken to Jambusar Hospital and thereafter, to Hospital at Vadodara. In the cross-examination, it has been stated that there is electricity in his village but, the place where he resides there is no electric light. It is also admitted that by the time witness came out of his house Bhikhabhai had fled away; that he learnt from the talks that bai Maghi had illicit relations with Bhikhabhai Chaturbhai and Bhikhabhai Chaturbhai used to come to the house of bai Maghi.

13. As far as giving of blow with thick piece of wood to the witness by Vitthalbhai Melabhai is concerned, the witness has consistently deposed the same and there is no reason as to why the witness should not be believed on Vitthalbhai Melabhai having dealt blow on his left shoulder. It is also suggested that upon hearing the shouts of his wife Jamnaben, the witness came out and was dealt a blow. At that time accused Vitthalbhai Melabhai was very much at the place of incident with one other person Dahyabhai already injured.

14. Another injured PW-3 Jamnaben stated in her evidence that at the time of incident Dahyabhai Somabhai was sleeping on the otta of her house because during those days he was doing the repairing work of Grampanchayat School; that along with Dahyabhai Somabhai, Bhikhabhai was sleeping; that she was sleeping inside the house with her husband Babubhai; that upon hearing the shouts coming from out side, she came out and saw Vitthalbhai dealing blows on Dahyabhai Somabhai; that she asked Vitthalbhai as to why he is giving blows to Dahyabhai Somabhai, whereupon Vitthalbhai dealt blow on the left ear of the witness with a long thick piece of wood; that she identifies the thick piece of wood as muddamal Article No.17; that upon receiving injury she raised shouts. In the meantime, her husband came out and he was also dealt blow on his left shoulder and thereafter, accused fled away. In the cross-examination, it has been stated by her that Bhikhabhai Chaturbhai was doing agricultural labour work and his house is 3rd from the house of witness. Nothing substantial has been brought out from the cross-examination of this witness. The witness has in categorical term stated that accused Vitthalbhai Melabhai was giving blows with long and thick piece of wood to Dahyabhai Somabhai and he also gave blows on her and her husband. Thus, witness has in

categorical terms stated that accused Vitthalbhai Melabhai having dealt blows on Dahyabhai Somabhai, on her husband and herself.

15. PW-1 has stated in his evidence that the injuries noted in medical certificate Exh.13 and Exh.14 were capable of being caused by hard and blunt substance. It need hardly be said that the thick piece of wood would be a hard and blunt substance. Thus, the injuries noted in Injury Certificate Exh.13 and Exh.14 received by PW-2 and PW-3 respectively are the injuries caused by muddamal Article No.17. The injuries caused to PW-2 and PW-3 are simple injuries within the meaning of Section 323 of Indian Penal Code. PW-2 and PW-3 are corroborated by the evidence of PW-1 and the injury certificate Exh.13 and Exh.14. Thus, the medical evidence lends corroboration to the say of PW-2 and PW-3.

16. As far as the injury caused to Dahyabhai Somabhai is concerned, it is suggested from the evidence that Dahyabhai Somabhai after the incident was taken to the police station and therefrom to SSG Hospital, Vadodara. The evidence also discloses that from the hospital Dahyabhai Somabhai ran away with the papers. Exh.25 is the death certificate suggesting the death of Dahyabhai Somabhai on 30.4.1992. As noted above, the incident took place in the early hours of 5.4.1992. That means Dahyabhai Somabhai died after 25 days of the incident. Vide Pursis Exh.24 learned Prosector in-charge of the trial declared that witness Dahyabhai Somabhai has died on 30.4.1992. All what can be said from the evidence of PW-1 and in the injury certificate, Exh.15, is that Dahyabhai Somabhai sustained injury. Since Dahyabhai died on 30.4.1992 his evidence could not be recorded in the trial. Only on the basis of the medical evidence, no finding as regards the injuries received by Dahyabhai at the hands of Vitthalbhai Melabhai could be recorded. Thus, it will be seen from the above evidence that the prosecution has been able to establish by a satisfactory and reliable evidence that in the incident of 5/4/1992 at 2.00 a.m. accused Vitthalbhai Melabhai caused hurt to PW-2 and PW-3 as observed above as far as the offence under Section 323 of the Indian Penal Code is concerned.

17. The above discussion would reveal that the evidence on record establishes beyond all reasonable doubts that in the incident which took place at 2.00 O'clock in the early hours of 4.5.1992 accused Vitthlabhai Melabhai committed the murder of his wife Maghiben in his own house by giving axe blows on the head of Maghibebn. It is also proved that soon after

committing the murder of Maghiben, Vitthalbhai Melabhai went to the house of PW-2 Babubhai Somabhai and dealt blows first on Jamnaben with thick piece of wood and thereafter, on complainant Babubhai Somabhai causing hurt to both of them and thereby, committed offence under Section 323 of the Indian Penal Code.

18. In view of the above, we are of the opinion that the conviction recorded for the offence under Section 302 and 323 of the Indian Penal Code and sentence imposed for both the offences against the accused -Vitthalbhai Melabhai by the trial Court deserve to be confirmed.

19. In the result, the appeal is dismissed. The conviction and sentence recorded for the offence under Sections 302 and 323 of the Indian Penal Code by the trial Court are confirmed.

(N.G.Nandi,J.)

(M.C.Patel,J.)
(vipul)